

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1258, CUTTACK, TUESDAY, AUGUST 25, 2015 / BHADRA 3, 1937

**SECRETARIAT
OF
THE ODISHA LEGISLATIVE ASSEMBLY**

NOTIFICATION
The 25th August, 2015

No.8933/L.A.—The following Bill which has been introduced in the Odisha Legislative Assembly on the 24th August, 2015 is herewith published under Rule 68 of the Rules of Procedure and Conduct of Business in the Odisha Legislative Assembly for general information.

**THE ODISHA UNDERGROUND PIPELINES, CABLE AND DUCT
(ACQUISITION OF RIGHT OF USER IN LAND)**

BILL, 2015

A

BILL

TO PROVIDE FOR THE ACQUISITION OF RIGHT OF USER IN
LAND FOR LAYING UNDERGROUND PIPELINE, CABLE
AND DUCT FOR CARRYING OF WATER, SEWAGE,
INDUSTRIAL WASTE AND TRANSMISSION OF
ELECTRICITY AND FIBRE OPTICS FROM ONE
LOCALITY TO ANOTHER AND FOR THE
MATTERS CONNECTED THEREWITH
OR INCIDENTALTHERETO.

BE it enacted by the Legislature of the State of Odisha in the
Sixty-sixth Year of the Republic of India as follows:—

Short title
extent and
commence-
ment.

1. (1) This Act may be called the Odisha Underground
Pipelines, Cable and Duct (Acquisition of Right of User in Land)
Act, 2015.

(2) It extends to the whole of the State of Odisha

(3) It shall come into force on the date of its publication in the *Odisha Gazette*.

Definitions.

2. In this Act, unless the context otherwise requires,—

- (a) “competent authority” means any person or authority authorized by the Government, by notification in the Official Gazette, to perform the functions of the competent authority under this Act;
- (b) “Corporation” means any body corporate established under any Central or State Act, and includes a company formed and registered under the Companies Act, 2013 of 18 of 2013. under any previous company law;
- (c) “Government” means the Government of Odisha;
- (d) “prescribed” means prescribed by rules made under this Act;
- (e) “right of user in land” means right of user in land for laying underground pipeline, cable or duct for carrying of water, sewage, industrial waste and transmission of electricity and fibre optics etc. and its repairing, maintenance, examination, alteration and removal; and
- (f) “underground pipeline, cable and duct” means a pipeline, cable and duct laid at a depth of not less than one and half metre of surface of the land and subsequently covered.

Publication of notification for acquisition of right of user..

3. (1) Whenever it appears to the Government that it is necessary in the public interest that for the carrying of water, sewage, industrial waste or transmission of electricity from one locality to another and works connected therewith, pipeline, cable or duct are required to be laid by the Government or a Corporation and that for the purpose of laying such pipeline, cable or duct, it is necessary to acquire the right of user in any land under which such pipeline, cable and duct may be laid, it may, by notification in the Official Gazette, declare its intention to acquire the right of user therein.

(2) Every notification under sub-section (1) shall give a brief description of the land.

(3) The competent authority shall cause the substance of the notification to be published at such places and in such manner as may be prescribed.

(4) Any person interested in the land may, within thirty days from the date of the notification under sub-section (1), object to the laying of the pipeline, cable and duct under the land in such manner as may be prescribed.

(5) Every objection under sub-section (4) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard either in person or by a legal practitioner and may, after hearing all such objections and after making such further inquiry, if any, as such that authority thinks necessary, by order, either allow or disallow the objection.

(6) Any order made by the competent authority under sub-section (5) shall be final.

Power to enter, survey etc. in the land.

4. On publication of the notification under sub-section (1) of section, 3 it shall be lawful for any person authorized by the Government or the Corporation, as the case may be, and his servants and workmen,—

- (a) to enter upon and survey and take levels of any land specified in the notification;
- (b) to dig or bore into the sub-soil;
- (c) to set out the intended line of work;
- (d) to mark such levels, boundaries and line by placing marks and cutting trenches;

- (e) where otherwise survey cannot be completed and levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop or other growth or fencing; and
- (f) to do all other acts necessary to ascertain whether pipeline, cable and duct can be laid under the land :

Provided that while exercising any power under this section, such person or any servant or workman of such person shall cause as little damage or injury as possible to such land.

Declaration
& acquisition
if right of
user.

5. (1) Where no objection under sub-section (4) of section 3 has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objections under sub –section (5) of that section, that authority shall ,declare by notification in Official Gazette, that the right of user in land for laying the pipeline, cable and duct should be acquired.

(2) On publication of the declaration under sub-section (1),the right of user in the land specified therein shall vest absolutely in the Government free from all encumbrances.

(3)Notwithstanding anything contained in sub-section(2),the Government may, on such terms and conditions as it may think fit to impose , declare, by notification in the Official Gazette, that the right of user in the land for laying the pipeline, cable and duct shall, instead of vesting in the Government, vest in the Corporation proposing to lay the pipeline, cable and duct and thereupon the right of such user in the land shall, subject to the terms and conditions so imposed , vest in that Corporation free from all encumbrances.

(4) Where in respect of any land, a notification has been issued under sub-section (1) of section 3 but no declaration under sub-section (1) or under sub-section (3) of this section in respect of any parcel of land covered by that notification has been published within a period of one year from the date of that notification, that notification shall cease to have effect on the expiration of that period.

Government
or
Corporation
to lay
pipeline,
cable and
duct.

6. (1) Where the right of user in any land has vested in the Government or Corporation under section 5,—

- (i) it shall be lawful for any person authorized by the Government or Corporation, as the case may be, and his servants and workmen to enter upon the land and lay pipeline, cable and duct or to do any other act necessary for the laying of pipeline, cable or duct:

Provided that no pipeline, cable and duct shall be laid under,—

- (a) any land which, immediately before, the date of the notification under sub-section (1) of section 3, was used for residential purposes;
 - (b) any land having potential value for house site, the parameters of which shall as may be prescribed;
 - (c) any land on which there stands any permanent structure which was in existence immediately before the said date; or
 - (d) any land which is appurtenant to a dwelling house.
- (ii) such land shall be used only for laying underground pipeline, cable and duct and for maintaining, examining, repairing, altering or removing any such pipeline, cable and duct or for doing any other act necessary for any of the aforesaid purposes or for the utilization of such pipeline, cable and duct.

(2) if any dispute arises with regard to any matter referred to in paragraph (a), paragraph (b), or paragraph (c) of the proviso to clause (i) of sub-section (1), the dispute shall be referred to the competent authority whose decision thereon shall be final.

Restoration
of
possession.

7. After laying the underground pipeline, cable and duct, the land shall be levelled and restored as good as before, by the Government or the Corporation, as the case may be, and the possession of land shall be handed over to the owner or occupier of the land by the competent authority and in this regard, the competent authority shall obtain the possession handing over

certificate from the land owner or occupier in such Form and in such manner as may be prescribed.

Restrictions regarding use of the land.

8. (1) The owner or occupier of the land, with respect to which a declaration has been made under sub-section (1), of section 5, shall after possession is handed over under section 7, be entitled to use the land for the purpose for which such land was put to use immediately before the date of the notification under sub-section (1) of section 3:

Provided that such owner or occupier shall not, after the declaration under sub-section (1) of section, 5,—

- (i) construct any building or any other structure;
- (ii) construct or excavate any tank, well, reservoir or dam;
- or
- (iii) plant any tree on that land.

(2) The owner or occupier of the land under which any pipeline, cable or duct has been laid shall not do any act or permit any act to be done which will or is likely to cause any damage in any manner whatsoever to such pipeline, cable or duct.

Power to enter land for inspection, etc.

9. For maintenance, examination, repair, alteration or removal of any pipeline, cable or duct or for doing any other act necessary for the utilization of the pipeline, cable or duct or for the making of any inspection or measurement for any of the aforesaid purposes, any person authorized in this behalf by the Government or the Corporation, as the case may be, may, after giving reasonable notice to the occupier of the land under which the pipeline, cable or duct has been laid, enter therein such workmen and assistants as may be necessary:

Provided that, where such person is satisfied that an emergency exists, no such notice shall be necessary:

Provided further that, while exercising any power under this section, such person or any workman or assistant of such person, shall cause as little damage or injury as possible to such land.

Compensation and Solatium.

10. (1) Where in the exercise of the powers conferred by section 4, section 6, or section 9, any damage, loss or injury is sustained by any person interested in the land under which the pipeline, cable or duct is proposed to be, or is being, or has been laid, the Government or the Corporation, as the case may be, shall be liable to pay compensation to such person for such damage, loss or injury the amount of which shall be determined by the competent authority in the first instance in the manner as may be prescribed and while determining such compensation, he shall have due regard to the damage or loss sustained by reason of,—

- (i) the removal of trees or standing crops, if any, on the land while exercising the powers under section 4, section 6 or section 9;
- (ii) the temporary severance of the land under which the pipeline, cable or duct has been laid from other lands belonging to, or in the occupation of, such person; or
- (iii) any injury to any other property, whether movable or immovable, or the earnings of such persons caused in any other manner:

Provided that in determining the compensation, no account shall be taken of any structure or other improvement made in the land after the date of the notification under sub-section (1) of section 3.

(2) Where the right of user of any land vested in the Government or the Corporation, the Government or the Corporation, as the case may be, shall, in addition to the compensation, if any, payable under sub-section (1), be liable to pay to the owner and to any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such vesting, compensation calculated at twenty five per centum of the market value of that land on the date of publication of the declaration under sub-section (1) of section 5.

(3) The market value of the land on the said date shall be determined by the competent authority.

Explanation.—For the purpose of this sub-section, the market value of the land means the Bench Mark Value determined as per the guidelines prescribed under the Odisha Stamp Rules, 1952 but where the competent authority is of the opinion that the Bench Mark Value is not the correct indicator of market value due to increase in market price, he shall take into consideration the average of last three higher sale transaction to decide the value.

(4) The competent authority having determined the compensation under sub-section (2) shall impose a "solatium" amount equivalent to one hundred per centum of the said amount which shall also be payable by the Government or the Corporation, as the case may be, to the owner and to any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such vesting.

(5) If the value determined by the competent authority is not acceptable to either of the parties, an application may be made by the party within thirty days to the District Judge having jurisdiction.

(6) The decision of the District Judge under sub-section (5) shall be final.

Deposit and
payment of
compensation.

11. (1) The amount of compensation and solatium determined under section 10 shall be deposited by the Government or the Corporation, as the case may be, with the competent authority with such time but not later than six months from the date of publication of notification under section 3 and in such manner as may be prescribed.

(2) If the amount of compensation and solatium are not deposited within the time prescribed under sub-section (1), the Government or the Corporation, as the case may be, shall be liable to pay interest thereon at the rate as may be prescribed, from the date on which the compensation had to be deposited till the date of the actual deposit.

(3) The competent authority shall pay compensation and solatium deposited under sub-section (1), within a period of two years from the date of notification under section 3, on behalf of the Government or the Corporation, as the case may be, to the persons entitled thereto failing which the entire processing for the acquisition of the right of user in land shall lapse.

(4) Where several persons claim to be interested in the amount of compensation deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the compensation and the amount payable to each of them.

(5) If any dispute arises to the apportionment of the compensation or any part thereof or as to the persons to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the District Judge having jurisdiction and the decision of the District Judge thereon shall be final.

Explanation.—In computing the period of two years referred to in this section, the period during which any action or proceeding in pursuance of the said declaration is stayed by an order of a court shall be excluded

Payment of interest if land is not handed over.

12. (1) If the possession of land is not handed over to the owner or occupier of the land under section 7 within a period of one year from the date of making payment of compensation under section 11, the Government or the Corporation, as the case may be, shall be liable to pay interest on the compensation so made, at the rate as may be prescribed, from the date on which the compensation amount had been paid to the owner or occupier of the land till the actual possession is handed over.

(2) The amount of interest determined under sub-section (1) shall be deposited with the competent authority and as soon as may be, after the amount of interest has been deposited under this sub-section, the competent authority shall, on behalf of the Government or the Corporation, as the case may be, pay such amount to the persons entitled thereto.

Special powers in case of urgency.

13. (1) In case of urgency, to be determined by the Government, the competent authority, though no such compensation has been determined under section, 10, may, on the expiration of fifteen days from the publication of the notification mentioned in sub-section (1) of section 3, proceed for acquisition of right of user in land needed for laying of underground pipeline, cable or duct :

Provided that the competent authority shall not acquire any right of user under this sub-section without giving to the occupier thereof at least forty hours' notice of its intention so to

do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such land without unnecessary inconvenience.

(2) In the case of any land to which in the opinion of the State Government, the provision of sub-section (1) is applicable, the Government may direct that the provisions of sub-section (4), (5) and (6) of section 3, shall not apply and if it so directs, a declaration may be made under section 5 in respect of the land at any time after the date of the publication of the notification under section 3.

(3) In every case under sub-section (1), the competent authority shall at the time of taking possession of such land in which the right of user in land is acquired, offer to the persons affected compensation for the standing crops and trees (if any) on such land and for any other damage caused by such sudden dispossession and in case such offer is not accepted, the value of such crops and trees and the amount of such other damages shall be allowed for in awarding compensation for the land under the relevant provisions.

(4) Before taking possession of such land in which the right of user in land is acquired under sub-section (1), the competent authority shall, without prejudice to the provisions of sub-section (3), tender payment of eighty per centum of the compensation for such land as estimated by the competent authority to the person interested and entitled thereto.

(5) The amount paid or deposited under sub-section ((4), shall be taken into account for determining the amount of compensation required to be determined under section 10 and where the amount so paid or deposited exceeds the compensation awarded by the competent authority under section 10, the excess may, unless refunded within three months from the date of competent authority's award, be recovered as an arrear of land revenue.

Competent authority to have certain powers of civil court.

14. The competent authority shall have, for the purpose of this Act, all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, 5 of 1908.. namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving of evidence on affidavits;
- (d) requisitioning any public record from any court or office; and
- (e) issuing commission for examination of witnesses.

Protection of action taken in good faith.

15. No suit, prosecution or other legal proceeding shall lie against any person for anything which is done or intended to be done in good faith in pursuance of this Act or any rule or notification made or issued thereunder.

Bar of jurisdiction of civil court

16. Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction to entertain any suit or try any dispute or pass any interim injunction in respect of any matter which the competent authority is empowered under this Act.

Penalty.

17. Whoever willfully obstructs any person in doing any of the acts authorized under section 4, section 6 or section 9 willfully fills up, destroys, damages or displaces any trench or mark made under section 4 or willfully removes, displaces, damages or destroys the underground pipeline, cable or duct laid under section 6 or willfully does any act prohibited under section 8 shall be punishable with simple imprisonment for a term which may extend to six months or with fine not exceeding rupees ten thousand or with both.

Offences
to be
cognizable.

18. All offences falling under section 17 shall be cognizable.

Charging of
fees.

19. In case where right of user of any land shall vest in a Corporation, the Government may charge such fees from the said Corporation as may be necessary for or incidental to the disposal of such case which shall be payable in the prescribed manner.

Power to
make rules.

20. (1) The Government may, by notification in the official Gazette and after previous publication, make rules for carrying out the provisions of this Act.

(2) All rules made under this section shall, as soon as may be after they are made, be laid before the Legislative Assembly for a total period of fourteen days which may be comprised in one or more sessions and if during the said period, the Legislative Assembly make modifications, if any therein, the rules shall thereafter have effect only with such modified form so however that such modifications shall be without prejudice to the validity of anything previously done under the rules.

Power to
remove
doubt or
difficulty.

21. If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order published in the official Gazette, make necessary provisions not inconsistent with the provisions of this Act as may appear to them to be necessary or expedient for removing the difficulty:

Provided that no order shall be made under this section after expiry of the period of two years from the date of commencement of this Act.

(2) Every order made under this section, shall, as soon as may be after it is made, be laid before the Odisha Legislative Assembly.

STATEMENT OF OBJECTS AND REASONS

There is no law for acquisition of right of user for laying underground pipeline, cable and duct under lands belonging to private individuals. Government may not compel the owner of the land to allow a user agency to lay pipelines, cable and duct underneath the land owned by him for the purpose of carrying water, sewage, industrial waste and transmission of electricity without backing of a legislation empowering the Government to do so, Different projects which require laying pipelines etc. underneath lands belonging to private individuals are held up due to want of right of user in land. Any action by the Government to impose terms and conditions upon a private land owner under which he will be bound to allow a user agency to have a right of user in land to lay pipelines, cable and duct underneath his land without the backlog of legislation may not withstand judicial scrutiny.

2. With the above view, it is considered to enact a special legislation to provide for acquisition of right of user in land for laying of pipelines, cable and duct for carrying water, sewerage, industrial waste and transmission of electricity and fiber optics from one locality to another and for the matters connected therewith or incidental thereto.

The Bill seeks to achieve the above objectives.

BIJAYSHREE ROUTRAY

Member-In-Charge

A.K. SARANGI

Secretary

Odisha Legislative Assembly